

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and)	CG Docket No. 17-59
Eliminate Unlawful Robocalls)	
)	

COMMENTS



I. INTRODUCTION & SUMMARY

The American Cable Association (“ACA”) hereby files comments in response to the above-captioned Consumer and Governmental Affairs Bureau (“Bureau”) Public Notice seeking “to refresh the record on how the Commission might further empower voice service providers to block illegal calls before they reach American consumers.”¹ While the Public Notice focuses on network-level blocking performed “without customer consent or opt-in,” it also asks about providers’ deployment of “third-party applications”

¹ See *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls*, Public Notice, DA 18-842 at 1 n.1 (rel. Aug. 10, 2018).

that offer call blocking “directly to consumers.”² To promote broader deployment of such tools, the Commission should clarify that providers may offer them to their customers through an informed opt-out process.

II. THE COMMISSION SHOULD AFFIRM THAT PROVIDERS HAVE FLEXIBILITY IN IMPLEMENTING TOOLS THAT HELP CONSUMERS BLOCK UNWANTED ROBOCALLS

ACA supports the Commission’s efforts to expand protections for consumers from unwanted robocalls. As the Public Notice suggests, a key part of these efforts is to build upon the Commission’s call-blocking rules by broadening the criteria under which providers may block traffic identified as unlawful.³ While that work progresses, consumer-driven robocall blocking tools will remain the primary means of shielding consumers from the vast majority of unlawful and unwanted calls.⁴ Appropriately, then, the Public Notice seeks comment on the extent to which providers include access to “third party” call blocking technologies “as part of their own offerings” and whether customers receive these services “on an opt-in or opt-out basis.”⁵

As the Commission, the Federal Trade Commission, and others have acknowledged, there are a number of call-blocking technologies available today that can help protect consumers from unwanted robocalls.⁶ ACA has discussed two such

² *Id.* at 3.

³ See *id.* at 1; see also *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706 (2017) (adopting rules that permit voice providers to block unlawful calls that fall into certain discrete categories).

⁴ While the Public Notice asks about call blocking and call labeling technologies, we focus our comments on call blocking. We agree, however, that call labeling is another worthy tool that can help mitigate the harms of robocalls.

⁵ Public Notice at 3.

⁶ See, e.g., Federal Trade Commission, FCC and FTC to Co-Host Expo on April 23 Featuring Technologies to Block Illegal Robocalls, Apr. 19, 2018, <https://www.ftc.gov/news-events/press-releases/2018/04/ftc-fcc-co-host-expo-april-23-featuring-technologies-block-0> (announcing April 2018

examples that providers typically offer on an informed opt-in basis: Nomorobo, a third-party service in which customers enroll directly, and a Metaswitch cloud-based call blocking technology that voice providers can themselves implement in their networks for the benefit of customers that wish to use the service.⁷ While these and other technologies that block unlawful robocalls are popular among those customers that have opted in to use them, “relatively few customers” have done so.⁸ The knowledge that opt-in rates for such technologies are currently low is a factor that deters some providers from investing resources to deploy these services more widely as part of their own offerings.

The Commission can help promote wider deployment of such technologies by affirming that providers have flexibility to offer them through an informed opt-out process. In expressly clarifying that providers may deploy such technologies on an opt-in basis, the Commission stressed consumers’ need for “new and better tools to stop robocalls.”⁹ Clarifying that providers may deploy such tools on an informed opt-out

expo that “showcase[d] innovative technologies, devices, and applications to minimize or eliminate the number of illegal robocalls consumers receive”); *see also* Consumer Commenters Aug. 20, 2018 Comments at 4 (discussing Nomorobo and other “advanced call-blocking tools” and noting that “advanced call-blocking tools have been shown to provide the customers that use them with real relief from robocalls”); Comments of ACA International on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 at 9 (filed July 3, 2017) (citing approvingly the “growing number of options for consumers to utilize call blocking tools”); Comments of Verizon on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 at 3-4 (filed July 20, 2018); Comments of Comcast on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 at 4-5 (filed July 20, 2018).

⁷ *See* Comments of ACA on Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59 at 5-7 (filed July 20, 2018) (ACA Robocall Comments). While the Metaswitch call-blocking service is implemented within a voice provider’s network, it can be activated or disabled for individual customers.

⁸ Consumer Commenters Aug. 20, 2018 Comments at 5.

⁹ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278 et al., Declaratory Ruling and Order, 30 FCC Rcd 7961, 8032, ¶ 155 (2015) (2015 Declaratory Ruling and Order).

basis as well would enable more customers to enjoy protections from unwanted robocalls while preserving customers' ability to decide whether to use such tools.¹⁰ The Commission should affirm that processes of this kind are consistent with Commission's prior guidance that providers may implement tools that help their customers block unwanted calls.

A. Affirmation that Robocall-Blocking Technologies Can be Deployed on an Opt-Out Basis Would Increase Their Availability and Use by Consumers

Affirming that providers have the flexibility to implement robocall blocking tools for their customers on an opt-out basis would encourage providers to offer these tools to their customers as part of their own offerings more widely than they do today. In clarifying providers' ability to offer these tools on an opt-in basis, the Commission rightfully observed that "widespread availability and use of call-blocking technology will substantially reduce the number of unwanted and illegal telemarketing calls received by customers."¹¹ In turn, consumer advocates commenting in this proceeding have articulated the principle that "[a]ll consumers should have access to effective anti-robocall technology, at no charge."¹² Providers themselves have an interest in offering such services to their customers for free as part of their own offerings, as effective

¹⁰ Providing robocall-blocking technology to customers on an informed opt-out basis would also help preserve the integrity of rather than "degrade the nation's telecommunications network" by sharply reducing the incidence of annoying and harmful unwanted calls that customers receive. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17903, ¶ 734 (2011).

¹¹ See 2015 Declaratory Ruling and Order, ¶ 156 (quoting the FTC).

¹² See Consumer Commenters Aug. 20, 2018 Comments at 4.

blocking of unwanted calls can vastly improve the customer experience and help a provider stand out amongst its competitors.¹³

Yet “the data suggests that relatively few customers are taking advantage of” the “advanced call-blocking tools” available to them on an opt-in basis,¹⁴ even though “[u]nwanted calls are far and away the biggest consumer complaint to the Commission with over 200,000 complaints each year.”¹⁵ While this discrepancy may seem surprising, it is well known that inertia can suppress opt-in participation rates.¹⁶

The expectation that few customers will opt in to use a call-blocking technology can deter a provider from investing the resources necessary to provide the technology to customers as part of its own offering, especially for free. The costs of providing such technology can be significant, and may include expenses associated with acquiring, installing and/or enabling use of the technology; activating or disabling the technology for individual customers; recording and tracking customer decisions whether to use the technology; and providing customer service support. Moreover, a provider deploying a technology on an opt-in basis would need to conduct extensive marketing and advertising to achieve just modest opt-in rates.

On the other hand, offering such technology on an opt-out basis would give a provider more assurance that a substantial percentage of its customers will enjoy the

¹³ See, e.g., ACA Robocall Comments at 5-6 (discussing ACA member WOW!’s interest in deploying the Metaswitch robocall-blocking technology “broadly to its customers at no cost”).

¹⁴ See Consumer Commenters Aug. 20, 2018 Comments at 5.

¹⁵ See Federal Communications Commission, The FCC’s Push to Combat Robocalls and Spoofing, <https://www.fcc.gov/about-fcc/fcc-initiatives/fccs-push-combat-robocalls-spoofing> (last visited Sept. 24, 2018).

¹⁶ See, e.g., Richard Thaler, Improving Retirement Saving Using Behavioral Economics, *available at* https://assets.aspeninstitute.org/content/uploads/files/content/upload/Thaler%20Aspen%20Secure%20Choice%2020_0.pdf (last visited Sept. 24, 2018).

benefits of the technology, making it more likely the technology will help differentiate the provider's voice product from its competitors'. The opt-out model therefore better supports the significant capital and operational costs of providing the service. Clarifying that providers have the flexibility to deploy call-blocking technologies on an opt-out basis would thus incentivize providers to deploy them more widely as part of their own offerings.

Such flexibility is particularly appropriate in a legal environment where providers have limited authority to engage in call-blocking without customer consent, leaving consumer call-blocking technologies as the primary tools available to protect customers from unlawful calls. Stimulating further demand for consumer call-blocking technologies will also help contribute to an "environment where such [technologies] can grow and improve."¹⁷

B. "Opt Out" Robocall Blocking Can Be Implemented in a Manner That Upholds Customer Choice

A provider can deploy a technology that blocks unwanted robocalls for its customers on an opt-out basis in a manner that performs as promised, enables its customers to make informed choices and that honors those choices. Most fundamentally, robocall blocking can be implemented on an opt-out basis in a manner that is intended and well-calculated to realize customer preferences.¹⁸

Consumers receiving robocall-blocking technology from their providers on an opt-out basis can be confident the technology will block unwanted calls and allow other calls

¹⁷ See 2015 Declaratory Ruling and Order, ¶ 163.

¹⁸ See *id.*, ¶ 158 (affirming that providers' offering of robocall-blocking options to their customers accords with Commission precedent that "*consumers* have the right to block calls").

to be received. Particularly where a provider is deploying a call-blocking technology for free, the provider will have strong incentives to deploy a technology it expects to be popular among its customers. A provider will not enhance customer goodwill or gain a competitive edge in the marketplace by implementing a call-blocking technology that bears a shoddy reputation or that its customers poorly receive. Nor is there any financial incentive in general for a provider to deploy a technology that blocks calls its customers would not want to have blocked.¹⁹ Moreover, the law generally prohibits blocking of calls without customer consent, and so the implementation of tools that significantly overblock calls could subject the provider to enforcement action by the Commission.²⁰ Regardless, providers should be expected to perform reasonable due diligence to confirm that any technology they seek to deploy on an opt-out basis performs effectively, both in terms of blocking unwanted calls and limiting the risk of overblocking.²¹

Providers deploying robocall-blocking technologies on behalf of their customers on an opt-out basis should also be expected to give disclosures that enable customers to make informed decisions whether to use the technology.²² Such disclosures should be sufficient to ensure that customers understand the general criteria the technology

¹⁹ To be clear, blocking of unwanted robocalls with customer consent differs from, and cannot be a pretext for, “self-help” undertaken to avoid access charges or for other selfish interests. *See id.*, ¶ 158.

²⁰ *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 2306, 2309 n.31 (“The Commission has previously found call blocking, with limited exceptions, is an unjust and unreasonable practice under section 201(b) of the Act.”).

²¹ Providers may also reasonably be expected to seek out technologies that “avoid blocking autodialed or prerecorded calls from public safety entities, including PSAPs, emergency operations centers, or law enforcement agencies.” *See* 2015 Declaratory Ruling and Order, ¶ 152.

²² *See id.*, ¶ 160 (admonishing providers to give “adequate disclosures” such that customers can make informed decisions whether to use a call-blocking technology).

uses to block calls,²³ how the technology generally determines that a call meets the criteria, under what terms the technology is being deployed, and how to opt out.²⁴

The disclosures should also clearly and prominently identify to consumers any risk that the technology may block calls it is not intended to block, including calls the customer may want to receive.²⁵ Providers should also be expected to make disclosures by whatever means a customer would normally expect to receive communications from the provider, which may be multiple means.

Finally, a provider should honor a customer's decision not to use a call blocking technology the provider offers. Providers that implement call blocking technologies on an opt-out basis should be expected to ensure that customers can opt out easily at any time and that decisions to opt out are given due effect. There should be a reliable process in place to ensure that the receipt of an opt-out notification leads promptly to disabling the call-blocking technology for that customer.

By following the guidance outlined above, a provider can implement robocall blocking for its customers on an opt-out basis in a manner that upholds and validates customer preferences. Affirming that providers may deploy call-blocking technologies along these lines would promote wider availability of these technologies, to the benefit of consumers.

²³ Disclosing to its customers the criteria it uses to block calls is one way a provider can hold itself accountable for its blocking of unwanted robocalls on an opt-out basis. A provider that engages in call blocking for purposes that exceed the criteria specified in its disclosure could be found to have blocked calls impermissibly under the Communications Act or to have committed an "unfair or deceptive" practice under the Federal Trade Commission Act. See 15 U.S.C. § 45.

²⁴ The disclosure of this information must be at a level so as not to inform unlawful robocallers how to circumvent the blocking technologies, or to require a blocking technology vendor to reveal to its competitors the intellectual property behind its process for blocking.

²⁵ See 2015 Declaratory Ruling and Order, ¶ 157 (clarifying that providers may offer customers robocall blocking tools that carry some risk of "inadvertent blocking" if the provider adequately discloses the risk).

III. CONCLUSION

ACA appreciates the opportunity to comment on the Public Notice and encourages the Commission to take its views into consideration as it moves forward in this proceeding.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "B Hurley", is positioned above the typed name of Brian Hurley.

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